

Institute of Advanced Legal Studies

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The Money Laundering and Terrorist Financing: An
Insight into The Money Laundering (Prohibition) Act of
2004, Laws of Nigeria

LLM 2011-2012

**International Corporate Governance, Financial Regulation and
Economic Law (ICGFREL)**

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Abstract.

Money laundering and terrorist financing has become a serious problem disturbing the social, economic and political roots of Nigeria. This is even more correct when it is encouraged by corruption, a prevalent disease in the country. Succeeding administrations of the Nigerian government has made various efforts at combating this debilitating ill.

*It is the main focus of this work to examine the money laundering provisions with particular reference to the **Money Laundering (Prohibition) Act of Nigeria, 2004** Laws of the Federation. Efforts are made to highlight the various loopholes in the past Nigerian anti money laundering frameworks and how these efforts have attempted to curb this menace.*

This work is divided into five chapters with the first giving a general overview of money laundering and terrorist financing with a focus on the nexus between money laundering and terrorist financing. It contains arguments that in the real sense, it is inappropriate to apply existing anti money laundering mechanisms to terrorist financing distilling from the assumption of an existing nexus. The second part sheds light on global efforts to combat money laundering and also domestic efforts via various established agencies to eradicate money laundering and terrorist financing. The third chapter analyses the Nigerian anti money laundering regimes as it has metamorphosed since 1989. Major provisions and differences are identified. The fourth chapter contains the effect of money laundering and terrorist financing, the weakness of the Nigeria anti money laundering regime. The fifth chapter proffers considerable solution, not just for an effective AML/CFT provisions but a practical strategy to curb corruption, a deep-rooted disease in the country.

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List of Abbreviations

AML	Anti-Money Laundering
CBN	Central Bank of Nigeria
CDD	Customer Due Diligence
CFT	Combating the Financing of Terrorism
CMO	Capital Market Operators
DNFBP	Designed Non-financial Bodies and professionals
DNFI	Designated Non-Financial Institution
EFCC	Economic and Financial Crimes Commission
FATF	Financial Action Task Force
FIU	Financial Intelligent Unit
GDP	Gross Domestic Product
ICPC	Independent Corrupt Practices Commission
IMF	International Monetary Fund
KYC	Know Your Customers
MAMSER	Mass Mobilization for Social Justice, Self-reliance and Economic Recovery
MDG	Millennium Development Goals
MLPA	Money Laundering (Prohibition) Act
NDLEA	National Drug Law and Enforcement Agency
NOA	National Orientation Agency
SAP	Structural Adjustment Program
SEC	Securities and Exchange Commission
STR	Suspicious Transaction Report
TPA	Terrorism Protection Act

Candidate No. F1009

WAI War Against Indiscipline

WAI-C War Against Indiscipline and Corruption

CHAPTER 1: INTRODUCTION

Gloomy times face Nigerians as the present administration wallows in helplessness and seeming lack of ability to tackle the ugly menace of various terrorist networks activities that are presently seeping through the pores of the development of the nation and have gained international recognition. These networks seem to be growing in their prowess as they work towards achieving their objectives and causes by various unflinching support and secret funding from different mediums to further their cause. The most prominent and recently, the most feared of them is the Islamic movement known by its Hausa name as the *Boko Haram* meaning “western education is sinful” who fights to oppose all form of western education and life style, opposing the seating government and insisting on Islamizing the entire nation.¹ They have claimed responsibility for the killings of thousands from their terrorist activities. However it is debatable whether *Boko Haram* is connected to other terrorist organizations outside the country, even where intelligence report has shown that sometime last year the group received N40 Million from an Algerian terrorist group and has been receiving training on the act of bomb making, use of bombs and kidnapping.²

¹ Stoyan Zaimov, “Boko Haram Says ‘Christians are Our Enemies’” *The Christian Post* (Lagos, June 15, 2012) <http://www.christiantoday.com/article/boko.haram.says.christians.are.our.enemies/30073.htm> assessed 20th June 2012

² ‘Boko Haram Receives N40m From Algeria Group Report’ *Daily trust* (Lagos, 14th May 2012) http://www.dailytrust.com.ng/index.php?option=com_content&view=article&id=162267:boko-haram-receives-n40m-from-algeria-group-report&catid=1:news&Itemid=2 assessed 20th June 2012,

Laundered money has over time been the major source of fund for highly organised international and domestic terrorist activities; a fact that establishes an obvious and comprehensible danger to the nation's political and economic stability.

Recent developments in Nigeria have necessitated greater move for the consideration of a robust framework aiming at eliminating money laundering and bringing to a halt the financing of terrorist financing. In the effort to mitigate what some may refer to as 'politically induced terrorism in Nigeria'³ the incumbent president Goodluck Jonathan has exhibited much courage in the fight against these acts. On the 7th of June 2011, the two most important Bills in the fight against insecurity facing Nigeria were signed into law by the National Assembly to wit, the Terrorism (Prevention) Act and the Money Laundering (Prohibition) Act 2011,⁴ the later repealing the Money Laundering (prohibition) Act of 2004.

The above Laws attempt to deal with uncertainties and realities confronting the nation today. While the Terrorism (Prevention) Act, 2011 stipulates measures for the prevention, prohibition and combating acts of terrorism in Nigeria, the implementation of the convention on the Prevention and Combating of Terrorism as well as the Convention on the Suppression of the Financing of Terrorism, the Money Laundering (Prohibition) Act, 2011

³ Emeka Oraetoka, 'Combating Terrorism and Money Laundering Induced Security: What is FG Plan for Nipost' *The Nigerian Village Square* (Lagos, 13th June 2011) <http://www.nigeriavillagesquare.com/emeka-oraetoka/combating-terrorism-and-money-laundering-induced-insecurity-what-is-fg-plan-for-nipost.html>, accessed 22nd June 2012.

⁴ Inonu Akgun ALP, 'Nigeria Signs Terrorism Prevention and Money Laundering Prohibition Bills', *AML- CFT News*, (15th June 2011) <http://aml-cft.blogspot.co.uk/2011/06/nigeria-signs-terrorism-prevention-and.html> accessed 22nd June 2012.

on the other hand prohibits the financing of terrorism, the laundering of the proceeds of crime. It also provides penalties for the violation of its provisions.

1.1 The Origin and Concept of Money Laundering

The practice of the crime of money laundering has been in the system longer than most of the regulations existing. Many call it the 'second oldest crime' and indicate it has existed even before the first tax code was put together;⁵ this is primarily because it is usually complete at the attempt to hide a financial transfer.⁶

Criminals require a legal clothing to mask their illegal means of income; otherwise it would not be too long before the arms of the law catch up with them, as their life style will always attract the attention of the law enforcement and the tax authorities.⁷ Furthermore, it is likely that certain investments yield better returns than some criminal activities. It is this background that suggests the imperativeness of the use of various vehicles to conceal nefarious activities and the transformation of the proceeds to a clean fund, hence the concept of money laundering. A general overview of the subject 'money laundering' is discussed in this chapter

⁵ K Munshani, 'The Impossibility of Regulating Terrorist Finance- A Critical Study of the Nine Special Recommendations Formulated by the Financial Action Task Force on Anti-Money Laundering' (2009) 5 (1) J. Islam. S. P: Int'l L 48.

⁶ Tom Naylor, "*Wages of Crime: Black Markets, Illegal Finance and the Underworld Economy*" (Montreal: McGill-Queens University Press, 2002) 134

⁷ H Morais, '*The War Against Money Laundering, Terrorism and the Financing of Terrorism*' (2002), 1 Lawsia J 2. See also, John Lea, Money laundering and Criminal Finance, <http://www.bunker8.pwp.blueyonder.co.uk/orgcrim/3807.htm>, assessed 22nd June 2012

The term “money laundering” is traced from the famous mafia ownership of Laundromats in the United States. As at that time, these gangsters profited massively from trafficking drugs, extortion, prostitution, gambling etc. In showing the source of their money they engaged in mixing money generated from their rackets with the earnings gotten from seeming legitimate means. This they did by purchasing businesses and in this case, a laundry business was acquired wherein profits gotten from their criminal activities were passed, disguising the main origins of their activities.⁸ The Gang leader *Al Capone* was however prosecuted and convicted in October 1931 for tax evasion. **Robinson** seems to argue that the whole story of the term “money laundering” as originating from the Chicago Mafias is nothing but a myth. In his words,

“Money laundering is called what it is because that perfectly describes what takes place - illegal, or dirty, money is put through a cycle of transactions, or washed, so that it comes out the other end as legal, or clean, money. In other words, the source of illegally obtained funds is obscured through a succession of transfers and deals in order that those same funds can eventually be made to appear as legitimate income”⁹

Be that as it may and whether the fact is on the acquisition of an actual laundry, the term “Money laundering” means the legitimization of illegally acquired money with the intent of

⁸ Arvind Giriraj and Prashant Kumar Mishra, *Money Laundering: An Insight Into the Modus Operandi With Case Studies*, Thinkers and Writers Forum 2009-10 (Skoch Development Foundation, India, 2010) p 7

⁹ J Robinson, *The Laundrymen* (Simon & Schuster London, 1998) p 3.

hiding its original or true source which include drug trafficking, prostitution, arms dealing, kidnapping, terrorist activities and all other criminal offences.

However, there seems to be a divergence in the definition of money laundering. Some definitions have related the concept to drug trafficking as is evident in the United States anti money Laundering framework. This is nonetheless agreeable, considering that the bulk of most suspicious wealth laundered in the U.S at that time, is related to drug trafficking. A rough check puts racket of the sale of cocaine, heroin and cannabis at US\$ 122 billion per year in the USA and Europe. 50-70% is also estimated to be available for money laundering and investment.¹⁰

Other jurisdictions including Nigeria have related the concept with consideration to all other types of criminal offences as specifically stipulated in their various anti money laundering frameworks.

And thus, the Nigerian anti money laundering framework, defines the concept as the conversion or transfer of

“Resources or properties derived directly from-

- i. Illicit traffic in narcotic drugs and psychotropic substances or
- ii. Participation in an organized criminal group and racketeering, terrorism, terrorist financing, trafficking in human beings and migrants smuggling, tax evasion, sexual exploitation, illicit arms, trafficking in stolen and other goods, bribery and

¹⁰ Financial Task Force, 1990, Section A.

corruption, counterfeiting currency, counterfeiting and piracy of products, environmental crimes, murder, grievous bodily injury, kidnapping, illegal restraints and hostage taking, robbery or theft, smuggling, extortion, forgery, piracy, insider trading and market manipulation..... with the aim of either concealing or disguising the illicit origin of the resources or property or aiding any person involved to evade the illegal consequences of his action.”¹¹

The above definition is an improvement on the repealed **Money Laundering (Prohibition) Act of 2004**,¹² which seemed to put into consideration only the offence of drug trafficking in relation to money laundering.¹³ This change is plausible, as the present provision by including a broader range of predicate offences, is in concurrence with the recommendation of Financial Action Task Force, FATF.¹⁴

And thus, authors have defined it as the “process of converting or ‘cleansing’ property, knowing that such property is derived from serious crime for the purpose of disguising its origin”¹⁵

In short terms, money laundering means the “integration of illicit funds into the main stream of legitimate finance in order to conceal the criminal sources and nature of such

¹¹ Money Laundering (Prohibition) Act, 2011. S.15. Hereinafter referred to as MLPA 2011

¹² Hereinafter referred to as MLPA 2004

¹³ MLPA 2004, S. 15.

¹⁴ FATF Recommendation 1.

¹⁵ T. Sherman, *International Efforts to Combat Money Laundering in Money Laundering* (ed. MacQueen) Edinburgh University Press 1993) p.13

funds and ultimately make the funds look clean.”¹⁶ The aforementioned definition intends that all money gotten through illicit means and concealed to appear legitimate amounts to money laundering.

1.2 The Money Laundering Process.

There is a consensus on a typical washing process of illegitimate money. This process has overtime shown to entail three stages (which may sometimes overlap) explained briefly in this paper. They include;

1. Placement
2. Layering and
3. Integration

The first step involves the introduction of illicitly acquired money into the financial system. This is usually completed through the breaking down of such funds into smaller and less conspicuous bits that are then lodged into bank accounts or by means of other instrument like cheques and money orders. ¹⁷ **Morais** opines that this inconspicuous breakdown is to subvert the legal requirement present in many countries compelling banks to report to relevant financial authorities transactions above a certain threshold.¹⁸

¹⁶ A Ikpong, ‘A Critical Analysis Of The Legal Mechanisms For Combating Money Laundering In Nigeria’,(2011) *African Journal of Law and criminology*, vol1, no 1, p.118

¹⁷ R Lastra, ‘Money Laundering and Financial Regulation’ in J Kleineman and L Gorton (eds) *Money Laundering* (Stockholm, Stockholm Centre for Commercial Law, 2012) 37

¹⁸ H Morais , ‘The War Against Money Laundering, Terrorism and The Financing of Terrorism’, (2002) *Lawasia J* 1 p.3

During the placement stage, the fund is intended to be disguised by moving the money now in the financial system away from their sources¹⁹ and through various complex conversions and transfers. Such transfers or conversions are often completed through wire transfers and purchase of assets. A typical example of such transfer is the recent case of the former Delta State governor Mr James Ibori who was convicted of diverting looted funds to the United Kingdom and engaging in the purchase of high priced properties.

This may involve currency smuggling; a process commonly utilised by public office holders in the country as well as politically exposed persons in looting public funds. In 2005, former governor of Bayelsa State Mr. Alamiyeseigha was arrested in September at Heathrow airport after £1m-worth of cash was found in his London home.²⁰ Other means include currency exchanges, purchasing of assets to change the form of proceeds from conspicuous bulk cash to a less conspicuous form etc.²¹

The second stage layering, involves concealing illegitimate money and placing it into circulation by disguising the source.

Upon the completion of the layering stage, the illicit funds are made to re-enter the financial system as “clean money”. This stage is known as the integration stage and the launderer without inhibition, uses the money to invest in various assets like real estates

¹⁹ N. C DeAssis and S.M Yikona, *‘Financial Sector Development and Money Laundering,’* (Mission Press , Zambia, 1995), 12.

²⁰ BBC News, Nigeria Governor To Be Impeached, 23 November 2005, <http://news.bbc.co.uk/1/hi/world/africa/4462444.stm> , accessed 28th June 2012.

²¹ DeAssis and Yikona (n 19) 13.

automobiles etc or enters a new business or worse still, engages in the furtherance of their criminal activities.

1.3 The Concept of Terrorist Financing As a Form of Money Laundering and Sources of Terrorist Financing.

Terrorism financing is a deep rooted practice characterized by extreme confidentiality, scheme, criminality and above all, a high degree of sophistication, complexity and smattering know-how of the global financial system.²² **Raphaeli** best expresses this “as an octopus with tentacles spreading across vast territories as well as across a wide range of religious, social economic and political realities”²³

Terrorist networks rely heavily on the financial system of any jurisdiction for the execution of their aims. And as **Giraldo** and **Trinkunas** put it, “financial and material resources” are the “lifeblood of terrorist operations”.²⁴ This is important owing to the need to undergo trainings, purchase high tech weapons, travel and in the case of Nigeria, offer bribes to ease their way through any obstacles.²⁵ Suffice to say that resources including financial resources and human which are often times not within the reach of individual terrorists are very essential for any successful execution of any terrorist act.

²² Nimrod Raphaeli, ‘Financing of Terrorism: Sources, Methods and Channels’, *Terrorism and political Violence*, Vol 15, No.4, 2003, p.59.

²³ *Ibid.* p. 59

²⁴ J. Giraldo and H. Trinkunas, *Terrorism Financing and State Responses: A Comparative Perspective*, (California, Stanford University Press, 2007) 1.

²⁵ J. Gillespie, ‘Follow the Money: Tracing Terrorist Assets,’ Paper prepared for a Seminar in International Finance, Harvard Law School, 15th April 2002.

The term “terrorist financing” became a global concept after the September 11 attack. Prior to this day, the concept existed but only as a crime on its own and never found its way into any anti money laundering framework or recommendations²⁶. However, the attack caused a new focus on the involvement of financial institutions as vehicles for most serious crimes,²⁷ a discovery which has brought awareness to various financial regulatory authorities on the use of the banking system and some other informal financial networks.

In general, the kinds and sources of financing terrorism may be linked to state bodies as in the past as well as private actors as in recent times.²⁸ The later may be further classified into two classes: legitimate funds and illegitimate or unlawful funds.²⁹ These mediums of financing are highlighted briefly.

The term “terrorist financing” is recorded to have first appeared in the UN general Assembly’s seminal declaration on Measures to Eliminate International Terrorism in 1994.³⁰ This seminar followed resolutions by the Security Council which implies the involvement of state entities in the financing of terrorism through various acts and omissions³¹. The Council’s opinion of state funding clearly comprises other means other

²⁶ Munshani (n 5) 50.

²⁷ M.E. Beare and S Schneider, *Money Laundering In Canada: Chasing Dirty Money and Dangerous Dollars*, (Toronto, University of Toronto Press, 2007) 248

²⁸ I. Bantekas, ‘The International Law of Terrorist Financing’ (2003) 97 AJIL, 316

²⁹ *Ibid.*

³⁰ GA Res. 49/60, Annex II, op. paras. 4, 5 (dec. 9, 1994)

³¹ SC Res. 1269 (oct.19, 1999) 1

than direct funding as long as it benefits any execution of terrorist activities. It seems the impetus for this conviction cannot be divorced from the 'law of state responsibility' distilled from The International Convention for the Suppression of the Financing of terrorism 1999³² as well customary law wherein it is would be internationally unlawful to engage in such activities.

Unlike several calls by the council to countries like Libya,³³ Sudan,³⁴ and Afghanistan³⁵ to desist from assisting or giving indirect assent to terrorist organizations, no report has been made against Nigeria in respect to indirectly giving assistance to any known terrorist organization.

However, With growing international pressure, there has been a reduction and less reliance in state sponsorship in terrorist financing and as such has placed newer reliance on other sources not excluding criminal activities such as arms trafficking, kidnap-for-ransom, extortion, racketeering and drug trafficking.

1.4 Nexus Between Money Laundering and Terrorist Financing

Traditionally, organized crime and terrorism were perceived as distinct forms of crimes³⁶ but as mentioned earlier, the September 11th tragic event led to a convergence of the two

³²³² International Convention for the Suppression of the Financing of Terrorism, Dec. 9, 1999, 39 ILM 270 (2000)

³³ SC Res. 748 (March. 31,1992)

³⁴ SC Res. 1044 (Jan. 31, 1996)

³⁵ SC Res. 1189 (Aug.13,1998)

³⁶ F. Bovenkerk and A Chakra, Terrorism and Organized Crime, 4 *UNODC Journal Forum on Crime and Society* (2004) p.76

concepts: money laundering and terrorist financing, under the directions and recommendations of the Financial Action Task Force.

Clearly the nexus was assumed from the belief that both utilize similar financial foundations for the transmission of funds while furthering their different activities. Having recognized a 'symbiotic relationship' or near connection between the concepts, the FATF concentrated in the similar patterns in the techniques employed in the two concepts and had since developed recommendations and guidelines from this assumption.

This assumed convergence by the FATF has however raised controversies as to the underlying nexus between the two concepts as well as the propriety or otherwise of combating terrorist financing with same regulations to combat money laundering. These issues, no doubt begs the question as to the existence of a nexus between the two concepts and if in the affirmative, to what extent is this nexus. The speedy resolution of this debate is essential because the national as well as the global community battles with problems such as the Iraqi insurgency, al Qaeda and as such the existence of this nexus prolongs the challenges and may in time lead to escalation of disturbance and threat to global security.³⁷

The reasons for this debate no doubt are founded on the characteristics of the two concepts. In **Sanderson's** view, transnational organized crime and international terrorism share both organizational and operational features, and may sometimes complement each other.³⁸ According to him, the advent of globalisation has informed terrorist groups and

³⁷ Thomas M. Sanderson, 'Transnational Terror and Organized Crime: Blurring The Lines', *SAIS Review* xxiv, Vol. No. 1 (winter-spring) 2004) p 49.

³⁸ *ibid*

their supporters of a plethora of illegal avenues to raise funds for their politically motivated causes and thus beneficial to terrorist and organised groups as well.

Similarly, the presence of this nexus is made unequivocal in the United Nations resolution 1373, where it noted

“concern this close connection between international terrorism and transnational organized crime, illicit drugs, money laundering, illegal arms trafficking, illegal movement of nuclear, chemical, biological and other potentially deadly materials”³⁹.

On the contrary, **Mushani** believes a deep difference is present in the both concepts and therefore ‘terrorism and its financing are not amenable to the same regulatory identification, monitoring or control as money laundering’ she therefore describes it as ‘a primary preventive strategy.’⁴⁰ **Wolosky and Heifetz** have held similar opinion holding that the rise and rise of terrorism and its financing may be attributed to the misplacement of procedures in tackling them,⁴¹ and therefore painting a picture of a squared peg in a circled hole. In his words ‘the chances of financial institution detecting [terrorist} financing

³⁹ U.N Res.1373 (2001) para.4

⁴⁰ Munshani (n5) p. 41

⁴¹ Lee Wolosky and Stephen Heifetz, ‘Regulating Terrorism’, (2002) *Law and Policy in International Business*, Vol. 34, No. 1. p 2

activities are negligible under a regulatory framework constructed for different purposes.’⁴²

Distilling from the ongoing debates, in view, I align my argument with that of the opponents of the assumption of a nexus on the grounds of the huge difference present between the two concepts which are highlighted hereunder.

The first distinction is the purpose of financing terrorist activities, which is obviously different from money laundering. While it is the aim of the terrorist financiers to obtain money for the furtherance of their activities rather than yield earnings,⁴³ the money launderer simply hide the illegal origin of his money to pass as legitimately gotten⁴⁴ and to avoid been detected. In other words and as **Waszak** puts it, “money laundering cleans dirty money: terrorist financing dirties clean money”⁴⁵

The common ground between the two sides of the debates seems to lie in their method of sourcing fund. Some of the major sources of terrorist financing include kidnapping, robbery, smuggling, drug trafficking, fraud. However these sources are hardly the only sources of their fund. However, a substantial amount of their funds also emanate from

⁴² *ibid*

⁴³ Financial Action Task Force on Money Laundering, *Guidance for Financial Institutions in Detecting Terrorist Financing* (2002), p. 5-6

⁴⁴ Helen Norman, ‘Tracing the Proceeds of Crime: An Inequitable Solution?’ in Peter Birks (ed) *Laundering and Tracing* (Oxford University Press, 1995) 95, 97

⁴⁵ J. Waszak, ‘The Obstacles of Suppressing Radical Islamic Terrorist Financing,’ (2005) 37 *Case W.Res.J. Int’l L* p. 673

legitimate sources such as trusts, charities, educational institutes, membership contribution, state sponsorship, hospitals etc.

Suffice to say that 'the application of anti money laundering techniques and policies to trace terrorist funds is an attractive approach as regards illicit money, such as that derived from drug trafficking, but not all terrorist funds are illicit.'⁴⁶

The FATF has thus acknowledged;

“Financial institution will probably be unable to detect terrorist financing as such. Indeed the only time that financial institution might clearly identify terrorist financing as distinct from other criminal misuse of the financial system is when a known terrorist organization has opened an account.”⁴⁷

The above statement is suggestive of the fact that the financing of terrorism would be difficult to detect where the funds emanate from purely legitimate sources. It is also reveals that owing to the divergences between terrorist financing and money laundering, similar remedies cannot be applied to both problems.

⁴⁶ Bantekas (n4), 319

⁴⁷ FATF on Money laundering, *Report on Money Laundering Typologies* (2002) 6

CHAPTER 2: COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

Money laundering impedes all-around development—social, economic, political, and cultural—worldwide. It has been partly due to globalization concomitant with cross-border and local underground economies of illegal businesses/activities associated with “drug trafficking, human trafficking, migrant smuggling, traffic in body organs, fire-arms, prostitution, racketeering” that give rise to huge illegal profits sought to be legitimized through money laundering.⁴⁸

Similarly, terrorist financing impacts the domestic and international economies. Terrorists also use the countries’ financial systems to route their illicit funds obtained through the aforementioned activities of money launderers. It is the objective of the regulators that the money launderers and terrorist financiers should be prevented from owning or misusing financial institutions criminal activities. Anti-Money Laundering (AML) and Combating Financing of Terrorism (CFT) legislations of countries throughout the world could be successful only with effective supervision. Bank sector compliance should therefore be monitored through effective methods. One of the methods is by the banking sector’s “know your customer” obligation and reporting of their customers’ suspicious transactions to the proper regulatory authorities. Although this sounds simple, the degree of compliance by the banking sector throughout the world has been low.

⁴⁸ Abdullahi y. Shehu, ‘Money Laundering: The Challenge of Global Enforcement,’ Paper Presented at a seminar of the criminology society of Hong Kong, on November 9, 2000, p 11.

In order to enact effective supervision of compliance, the most common principles for a supervisory framework to be followed by countries are: the supervisors should; 1) be vested with sufficient independence, 2) be made accountable, 3) have powers to access information, 4) be empowered to make rules, 5) have powers to impose penalties for non-compliance, and 6) be funded and have other necessary resources such as work infrastructure.⁴⁹ Four major risks that banks face in money laundering and terrorist financing are: 1) legal implications for non-compliance, 2) operational Risks 3) Reputational Risk 4) Liquidity Risk.

These risks are mutually exclusive and interrelated. Unless they are managed effectively, they will affect banks individually as well as the banking system itself. These Risks are examined hereunder:

Compliance risk: It results from poor observance of ML and CFT laws and regulations, thus attracting fines, penalties, damages, and other litigations. Operational risk: Banks are exposed to frauds and errors if operations are not well controlled, and as a result banks cannot deliver their services effectively and they lose their competitive position within the banking sector. Furthermore, the services or products that can be affected because of their use for money laundering or financing terrorism include deposits, loans, correspondent banking, and others such as trusteeship, electronic banking portfolios. Operational risks

⁴⁹ P. Chatain and J. McDowell and C. Mousset, P Schott and E Willbois, '*Preventing Money Laundering and Terrorist Financing. A Practical Guide For Bank Supervisors*' 2009, Viewed on 5 Aug 2012. http://www.coe.int/t/dghl/monitoring/moneyval/web_ressources/WB_guidesupervisors.pdf accessed on 20th July 2012

can be controlled by banks through effective internal controls, information systems, and policies aimed at increasing employee integrity.⁵⁰

Reputational risk: A bank's reputation is at stake due to the absence of sound anti-money laundering and anti-terrorist financing, and in turn their country's reputation and economic environment are also at stake. Incidents of money laundering and terrorist financing in a bank can affect the retention of existing business relationships and the establishment of new ones. An example of Riggs National Bank, Washington D.C. can be cited. The bank was fined \$40 million due to a lack of sound AML practices. It had opened multiple private banking accounts in the name of former Chilean dictator Augusto Pinochet and other politically exposed persons with millions of dollars without observing due diligence. For this reasons, many of its customers left leaving the new customers very sceptical. The banks preoccupation with the problem detected had a resulting effect as they became distracted from their regular business activities. Despite no action from its regulators, the bank lost substantial earnings and had to be taken over by another bank.⁵¹

Credit risk: Credits extended to businesses involved in criminal activities without observing due diligence add to the bank's overall credit risk, since those involved in money laundering and/or terrorist financing do not intend to repay loans taken through identity

⁵⁰ International Federation of Accountants,' *Anti-Money Laundering*,' March 2004, (2nd ed), available at [http://www.apgml.org/issues/docs/23/Int'l%20Federation%20of%20Accountants AML%202nd%20Ed.pdf](http://www.apgml.org/issues/docs/23/Int'l%20Federation%20of%20Accountants%20AML%202nd%20Ed.pdf) assessed 24th August 2012

⁵¹ See *Money Laundering And Foreign Corruption: Enforcement And Effectiveness Of The Patriot Act*. Case Study Involving Riggs Bank. Report prepared and released by the minority staff of the permanent subcommittee on investigations on July 15 2004. <http://www.hsgac.senate.gov/imo/media/doc/ACF5F8.pdf?attempt=2> accessed 20th July 2012

thefts and non-existent guarantors and counter-parties. Banks engaged in international lending have a greater credit risk. Liquidity risk: A bank's liquidity can be affected when it is unable to meet its liabilities in time, especially when customers wish to withdraw their accounts upon learning of the bank's involvement in money laundering and terrorist funding.⁵²

Examples of money laundering in banks controlled by criminals: 1) Bank of Credit and Commerce International (BCCI). Agha Hasan Abedi, the bank's founder, and Swaleh Naqvi, his assistant, managed to establish a criminal structure within the bank that led to its spectacular growth and 'guaranteed collapse'. The structure had been so created as to evade regulatory control by the government through an impenetrable hierarchy of holding companies, resulting in a fractured corporate structure, record keeping, regulatory review, and audits that facilitated free movement of capital and goods without restrictions. BCCI's fraud involved its customers engaged in money laundering in Europe, Africa, Asia, and the Americas. BCCI bribed officials in countries of these regions, supported terrorism, arms trafficking, illicit transfer of nuclear technologies, prostitution, tax evasion, smuggling and illegal immigration, etc.⁵³

The Russian Federation of 1990s: The Russian federation's law enforcement agencies reported that about half of the commercial banks, 60% of public and 40% of private businesses were controlled by organized crime as of 1998, facilitating hassle-free

⁵² P Chatain, (n 49)

⁵³ J. Kerry and H. Brown, 'The BCCI Affair: Report to The Committee on Foreign Relations of The United States Senate', 1992 p 46.

generation of illicit proceeds and providing long-term advantages for money laundering activities. No stringent AML could control a bank owned and run by criminals.⁵⁴

2.1 The International Dimension

Money laundering and terrorist financing cannot be accurately measured due to the secret nature of their operations. They cannot be statistically analysed, since the launderers and terrorist financiers do not maintain records of their transactions or make public their profits. As the operations are globally involved, estimates are even more difficult. The violators take advantage of weak AML regimes of different countries to perpetuate their wrongdoings. However, IMF's estimate is that money involved in laundering would form between two to five per cent of world GDP. As per 1996 values, percentages would translate into US \$590 billion and US \$1.5 trillion respectively.⁵⁵

The international community has been in the fore front in combating money laundering and terrorist financing bearing in mind that these offences utilize complex and 'high speed international mechanism'⁵⁶ to carry out their objectives. It is therefore very important that concerted efforts be made to curb the menace.

It is arguable that this effort dates back to the acknowledgement of the fact that drug

⁵⁴ United Nations Office for Drug Control and Crime Prevention (UNODCCP). 'Russian Capitalism and Money Laundering ' (2001) United Nations: New York, p.18.

⁵⁵ V. Tanzi 'Money Laundering and International Finance System' *IMF Working Paper* No 96/55, 1996 pp 3 and 4.

⁵⁶ The World Bank Reference Guide to Anti-Money Laundering and Combating the Financing of terrorism, 2006, 2nd edn and supplement on Special Recommendation on Special Recommendation IX. III-2.

trafficking was an international dilemma and could only be dealt with through a multilateral basis. This is evident from the first international convention, which had drug trafficking offenses as the only predicate offence⁵⁷. Many serious crimes have now been given international recognition and have since been included as predicate offences by various countries.

This chapter attempts to discuss the various international efforts made to curb money laundering and terrorist financing. It further examines the efforts that have been made in Nigeria locally and through its cooperation with other bodies to fight this global menace.

2.1.1 The United Nations.

The United Nations (UN) has been very vibrant and has played an important role in the fight against money laundering on a global level for a number of reasons including having the biggest number of membership, running an anti-money laundering programme called the Global Program Against Money Laundering (GPML) which has its headquarters in Vienna Austria and lastly, the ability of the UN to adopt in a treaty or a convention, once a country has signed, ratified and implemented it. More so, by the powers of the Security Council, member states are bound by certain resolutions of the General Assembly.

2.1.2 The Vienna Convention

Owing to the concerns in drug related offences and funds resulting thereto entering into the financial system, the UN adopted the Convention Against Illicit Traffic in Narcotic Drugs

⁵⁷ A predicate offence in this case is the illegal offence necessitating the proceeds that are then subject to money laundering

and Psychotropic Substances also known as the 1988 Vienna Convention but came into force in 1990. This Convention deals with provisions to curb the trading of drug related substances. Although the Convention is limited to drug related offences as predicate offences and does not literally use the term money laundering, it however defines the concept and admonishes countries to criminalize it.⁵⁸

2.1.3 Palermo Convention.

Another important Convention of the UN is the International Convention Against Transnational Organized Crime (2000)⁵⁹ also known as The Palermo Convention which member states are obligated to implement by criminalizing money laundering whether committed in or outside the country.⁶⁰ More so, members are obligated to institute a robust regulatory framework to deter and identify money laundering in all its forms and ensure proper customer identification, record keeping and prompt reporting of suspicious transactions to appropriate channels.⁶¹ Members states are also enjoined to authorize the exchange of information among law enforcements, administrative and all other regulatory authorities engaged in the fight against money laundering and terrorist financing domestically and internationally. Members are also enjoined to institute financial intelligence units to collect, analyze and disseminate information relating to money

⁵⁸ The Vienna Convention, Article 3 (b) and (c) (i).

⁵⁹ The United Nations Convention Against Transnational organized Crime, www.unodc.org/documents/.../TOC%20Convention/TOCebook-e.pdf assessed on the 12 July 2012

⁶⁰ The Palermo Convention, Article 6

⁶¹ Id, Article 7 (1) (a)

laundering and terrorist financing⁶²

This convention has however been criticized as having not kept pace with the 'changing reality of international crime' bearing in mind the nightmare of terrorism during these past decade.⁶³

2.1.4 International Convention for the Suppression of the Financing of Terrorism

In response to the September 11 2001 sad event, the UN adopted this Convention, which came into force in April 10, 2002, with 132 countries as signatories and 112 countries ratifying it. This Convention prohibits any direct or indirect, unlawful and willfully making available or accepting funds with the intention of using them for any act of terrorism as provided in the annex. Member states are obligated to criminalize these offenses under its domestic law and if committed.

2.1.5 United Nation Security Council Resolution 1373

Quite different from the international conventions requiring assent by signatories, a Security Council Resolution passed in reaction to a threat to international peace and security binds member state under Chapter VII of the UN Charter.⁶⁴ The Security Council Resolution of 1373 adopted on September 28 2001 obligating its member countries to

⁶² Id, Article 7 (1) (b)

⁶³ Andre Standing, "Transnational Organized Crime and The Palermo Convention: A Reality Check" 2010 International Peace Institute, 14

⁶⁴ Charter of the United Nations and Statutes of the International Court of Justice, <http://www.un.org/aboutun/charter/index.html> Assessed on the 3rd August 2012.

criminalize terrorist financing in addition to denying all forms of support for terrorist groups, including acting as a safe haven for terrorists and terrorist acts. It also prohibits active or passive assistance to terrorists and requires banking sectors to extend cooperation to other countries in criminal investigations and share information on planned attacks. This Resolution also established the Counter Terrorist Committee (CTC) as monitoring machinery to member states whom are expected to give detailed report to this committee on how they have variously implemented the resolutions in combating terrorism and it's financing.

2.1.6 The Financial Action Task Force on Money Laundering

The FATF, an intergovernmental organization formed in 1989 by the G-7 countries and having the objective of combating money laundering through developing and promoting international standards for the fight against money laundering through its 40 recommendations. However following the September 11 2001 bomb attack on U.S, the FATF included the fight against terrorist financing in its objective by imposing 9 more special recommendations. The FATF's three primary functions in connection with money laundering are: 1) monitor the progress in the implementation of anti-money laundering efforts by member countries, 2) review and report on the current trends in money laundering, including new techniques and counter measures, and 3) promote money laundering standards at the international level. The FATF adopted what became known as

the 40 + 9 recommendations considered as mandates for the member countries.⁶⁵ New standards have now been issued by FATF in February 2012, after its revision in 1996 of the original 40 recommendations. The new standards include assessment of risks and application of a risk-based approach, cooperation and coordination among nations, which should ensure development and implementation of policies to fight against money laundering, terrorist financing, and financing of proliferation of weapons of mass destruction, among others.⁶⁶

The new standards remain as 40 original recommendations that have been reviewed and expanded upon. One of the interpretations states that a risk-based approach is an effective way of fighting against money laundering, and that terrorist financing should be designed in keeping with the capacity and anti-money laundering experience of a particular sector. The sectors having greater capacity and AML/CFT experience should be given greater discretion and responsibility. The financial institutions and designated non-financial bodies and professions (DNFBPs) should be able to put in place preventive measures that are commensurate with the identified risks and thus allocate risks accordingly.⁶⁷

⁶⁵ P Schott 'Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism' 2006, *The International Monetary Fund*. http://siteresources.worldbank.org/EXTAML/Resources/396511-1146581427871/Reference_Guide_AMLCFT_2ndSupplement.pdf viewed on 5TH Aug 2012

⁶⁶ FATF ON *International Standards on Combating Money Laundering and the Financing of Terrorism and Proliferation*, February 2012, <http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%20approved%20February%202012%20reprint%20March%202012.pdf> Assessed 5th August 2012

⁶⁷ *ibid*

Sad enough, the FATF has in the last couple of years assumed a political role in its duties by attacking non-members who have failed to comply with its guidelines and have blacklisted such countries as non-compliant countries. For example FATF mandates every country to establish a financial intelligent unit (FIUs), with the responsibility of receiving, analyzing and disseminating information of likely laundering activities. Not every country can afford the luxury of establishing a body like the FIU and most country would most likely establish a non-functioning body just to satisfy the demands of the FATF.⁶⁸ The effect of this blacklisting could be disastrous especially towards a country with a growing economy.

2.2 The Nigerian Dimension

Every country's framework in the fight against money laundering and the financing of terrorism has three main objectives. The first is to dissuade launderers or financiers from the use of the country's financial system for the illegal purposes, secondly to spot money laundering and terrorist financing and lastly to prosecute persons involved in the activities.⁶⁹ According to a GIABA report in 2010, Nigeria is the leading West African country in money laundering. It is estimated to lose US \$37 billion (N 11.6 trillion) every year due to money laundering. Nigeria remains the hub of the sub-Saharan region for illicit

⁶⁸ Nigel Morris-Cotterill, *Money Laundering*, Washington Post, Newsweek Interactive, LLC <http://www.jstor.org/stable/i359465>, assessed 23rd August 2012.

⁶⁹ Pierre-Laurent chatain and John MnDowel land Cedric Mousset and Paul Allan Schott, Emile van der Does de Willebois, *Preventing Money Laundering and Terrorist Financing, A Practical Guide For Bank Supervisors* 2009, Washington DC p 33

flows originating from oil exporters.⁷⁰ Some U.K. banks are reported to have been involved in the money laundering of funds from corrupt Nigerian politicians even after the exposure of 15 U.K. banks that had laundered the funds of late Nigerian dictator Gen San Abacha. The banks, which including Barclays, NatWest, and HSBC, had received deposits of \$1.3 billion from the dictator as reported by the Daily Telegraph in 2001.⁷¹ In 2004, the former governor was held in London for money laundering from 1999 and to crown it all the most recent conviction of the former governor of Delta state in the London Southwark crown Court wherein he was convicted for money laundering.

The money laundering containment is one of the most important items of the Nigerian agenda because of its notorious effect on national and global systems and economies, including national security.⁷² This is the reason Nigeria has shown tremendous dedication to AML/CFT matters both inside the country as well as in the region

Previously, a number of measures have been taken by succeeding governments in Nigeria in the war against money laundering and corruption. Some of them include the “War Against Indiscipline (WAI), the National Orientation Agency (NOA), Mass Mobilization for Social Justice, Self-Reliance and Economic Recovery (MAMSER), War Against Indiscipline

⁷⁰ A. Madugba, ‘Nigeria Leads African Nations in Money Laundering Crimes’ *Money Laundering* 2011, <http://launderingmoney.blogspot.in/2011/12/nigeria-leads-african-nations-in-money.html> viewed on 5 Aug 2012

⁷¹ Binakuromo Ogbebor, ‘Role of UK Banks in Nigeria’s Corruption Cases’ *The Punch* (Lagos, June 2 2012) www.puncng.com/opinion/role-of-uk-banks-in-nigerias-corruption-cases/ assessed 10th of August 2012.

⁷² N Wokoma, “Anti-Money Laundering and Combating the Financing of Terrorism (AML/CFT)” *A Paper Presented at the Third Business Law Conference of the Nigerian Bar Association*, 2008, p.1.

and Corruption (WAI-C).”⁷³ The later was formed by the then military administration under the leadership of Mohammed Buhari who justifies the military coup by criticising the corruption of the civilian government.⁷⁴

In compliance with the Vienna Convention, 1995 saw the enactment of the very first (AML) framework to criminalise the proceeds of illicit drugs in Nigeria but had its lapses as it covered only drug related offences, which were the only crime for the perpetuation of money laundering. However, the Money Laundering (prohibition) Act of 2004 tried to correct this problem. While Buhari’s administration wrestled indiscipline and corruption through WAI-C, President Olusegun Obasanjo’s waged the same war through EFCC and ICPC, transformed from the WAI-C.

It is arguable that effectual anti money laundering structure was set up during Obasanjo’s administration through the enactment of the Economic and Financial Crimes Act of 2004 and a coordinating agency Economic and Financial Crimes Commission (EFCC), saddled with specifically looking into financial crimes to wit; the advance fee fraud also known as 419 as well as the eradication of money laundering in Nigeria and also in partial response to increasing demands from the FATF on money laundering after its blacklisting of Nigeria as among the non cooperative countries in the war against money laundering.

⁷³Sylvanus Ogbonna, *EFCC and Money laundering Control in Nigeria*, Glo articles, <http://www.gloarticles.com/EFCC+money+laundering+crime-29.cgi> assessed 17th August 2012.

⁷⁴ Nigeria’s Muhammadu Buhari in Profile, BBC News Africa, 18th April 2011, <http://www.bbc.co.uk/news/world-africa-12890807> assessed 17th August 2012.

In tandem with international best standard, Nigeria has joined the Egmont group in the fight against money laundering and terrorist financing by establishing the Nigeria Financial Intelligence Unit (NFIU) in 2005 under the EFCC to receive, analyze and disseminate financial intelligence to law enforcement agencies and other relevant institutions. Financial institutions and designated non-financial institutions are obligated to prepare recorded reports of any suspicious transactions to the NFIU.

Furthermore, the Securities and Exchange Commission (SEC) by its power to protect the integrity of the securities market from market abuse, fraudulent and unfair trade practices,⁷⁵ also plays a role in the fight against money laundering and terrorist financing. Giving the international concerns and risks posed to the domestic and global markets, efforts to curb the menace has become very imperative. In connection to this, the Commission in 2010 had issued a compliance manual direct Capital Market Operators (CMOs) in the operation of the Know Your Customer (KYC) and Customer Due Diligence (CDD) requirement for the financial capital market.⁷⁶ The guideline contains principles from the Nigerian AML/CFT, FATF recommendation and other guidelines of international best practices. It also requires a risk-based approach in the process of identifying and managing AML/CFT risks. Sanctions have also been prescribed on the CMOs for non

⁷⁵ Investment and Securities Act 2007, Laws of the Federation, S. 13 (n)

⁷⁶ *Anti-Money Laundering/Combating Financing of Terrorism (Aml/Cft)* Nigerian Securities And Exchange Commission's Compliance Manual for Capital Market Operators 2010, <http://www.sec.gov.ng/files/AML%20CFT%20COMPLIANCE%20MANUAL.pdf> assessed 17th August 2012.

compliance with the manual or any other relevant AMLs relating to CDD subjects, failure to keep appraise records and failure to report to the appropriate authorities.⁷⁷

In the fight against terrorism, legislation on terrorism and terrorist financing was passed in 2011 as the **Terrorism (Prevention) Act, 2011**. The TPA among others principally prohibits terrorism in all its forms, the financing or funding of terrorism. It further mandates financial institutions or designated non-financial institutions to make reports to the Financial Intelligence Unit of any suspicious transactions related to terrorism.

⁷⁷ *ibid*

CHAPTER 3: MONEY LAUNDERING AND TERRORIST FINANCING IN NIGERIA, AN APPRAISAL OF THE MONEY LAUNDERING (PROHIBITION) ACT, 2004.

Notwithstanding rigorous regulations, it will be untrue to suppose that the height of money laundering and terrorist financing activities in the country would plummet simply because of the enactment of several AML/CTF frameworks. It seems rather a herculean task no matter how much strength or good intentions the government may have towards curbing the menace, in a developing country like Nigeria.

The Nigerian Anti money laundering regime has since 1989 metamorphosed into the present anti money laundry regime of 2011. These changes have been made to meet the challenges caused by the changing environment as well as comply with international standards. The 1995 anti Money laundering Act⁷⁸ for one was jettisoned owing to a number of lacunas inherent in them which acted as drawbacks to its effectiveness. These loopholes are identified by **Ojo** as emanating from the military regime syndrome bedevilling the nation at the time wherein Decrees were usually made after a close room meeting of the Security Council without much legislative debate⁷⁹ and as such not meeting the international standards.

Although the 2004 Act makes broad provisions in relation to money laundering, there were inadequacies and inefficiencies inherent in them resulting to the enactment of the present **Money Laundering (Prohibition) Act of 2011.**

⁷⁸ Decree No. 3 of 1995

⁷⁹ A. Ojo, *Constitutional Law and Military Rule in Nigeria* (Evans Brothers Publishers Limited, Ibadan 1987) 32

As explained in the early part of this paper, it is intended in this part to juxtapose the anti money laundering regimes of 2004 and 2011, discussing the provisions by tackling the major issues on money laundering and terrorist financing as well as highlighting the major differences between the two frameworks. In doing this, a focus is made on the most important sections as mechanisms to fight ML and TF through Customer Due Diligence measures (CDD), Know Your Customer (KYC), Suspicious Transaction Report (STR). However, a brief historical review is important to shed lights on the efforts made from 1995 and the need to meet the changing and challenging environment.

3.1 The AML Legislative Path From 1995 -2004

The first anti money laundering framework enacted in Nigeria was known as the Money laundering Decree of 1995.⁸⁰ This statute dealt with the major flaw contained in the **Nigerian Drug Law Enforcement Agency Act (NDLEA) Decree 48 of 1989**, which restricted money-laundering offences particularly to the laundering of the proceeds of illicit drugs; thus limiting the scope of its framework. The lacuna here reveals that there existed many other financial and economic crimes apart from drug related offences, also threatening national and international peace and security⁸¹ and contributing to the escalation of money laundering. It emphasised the narrowness of the scope of the Vienna Convention which concerned itself ‘with the prohibition of the laundering of the proceeds

⁸⁰ supra 76

⁸¹ Adegboyega A. Ige, ‘A Review of The Legislative and Institutional Frameworks For Combating Money Laundering in Nigeria’. P. 102, www.nials-nigeria.org/journals/Adegboyega%20A.%20Ige.pdf assessed 12th August 2012.

of drug trafficking and its related offences.⁸² Suffice to say, there were other economic and financial crimes of international attention at that time, aside drug trafficking.

Noticeably, the **Palermo Convention** of 2000 while adopting the earlier definition by the Vienna Convention extended this scope of operation by using the phrase “the proceeds of crime”.⁸³ The effect of the Palermo convention necessitated a turn in the Nigerian legislation on money laundering wherein the **Money Laundering Decree of 1995** was repealed and the **Money Laundering (Prohibition) Act of 2003** enacted in its place. This legislation however lasted for only 10 months before it was replaced with the **Money laundering (Prohibition) Act of 2004**.

The 2004 Nigeria anti money laundering framework on the face of it appears not to have much dissimilarity with the repealed Act of 2003 as both are structured nearly in the same number of sections.⁸⁴ Nevertheless, a close appraisal reveals noteworthy differences present between the both Acts. These differences have been summarized hereunder. First and foremost, the 2004 Act established the Economic and Financial Crimes Commission and invested in them powers to investigate money laundering⁸⁵ and all other financial crime, a power which was hitherto vested in the National Drug Law and Enforcement Agencies.⁸⁶ Further more the Act of 2004 introduced the term “Designated Non-Financial

⁸² See the Vienna Convention, Chapter 2

⁸³ Palermo Convention, Article 6(1)(a)(i)(ii)

⁸⁴ The 2003 Act is one Section more than the 2004

⁸⁵ Economic and Financial Crimes Commission Act, Cap. E1, LFN 2004. S.6 (b)

⁸⁶ MLPA 2003, S.12,

Institution and listed in the interpretative section, institutions falling within the class.⁸⁷ They include: “dealers in jewelries, cars and luxury goods, chartered accountants, audit firms, tax consultants, clearing and settling companies, legal practitioners, hoteliers, casinos, super markets or such other businesses as the Federal Ministry of Commerce or appropriate regulatory authorities may from time to time designate.”⁸⁸ The above listed institutions are obligated to keep records and surveillance on certain transactions. They are also obligated to properly make known to the EFCC and NDLEA of any transaction above the limit of N1,000,00 (One Million Naira) or its equivalent for individuals on the one hand and N5, 000,000 (Five Million naira) for corporate entity on the other hand.⁸⁹ The reason for this could be attributed to the fact that money launderers would move their ill gotten wealth to the designated Non Financial Institutions if laundering through financial institutions is made or found to be impossible.

Furthermore, both Acts compel persons engaged in ‘over the counter exchange transaction’ to acquire customer information and keep proper record of such information for a certain period of time. While MLPA 2003 provides for the keeping of such information for 10 years, MLPA 2004 prescribes 5 years of keeping such records. This reduced period of 5 years from the view of **Ige** seems to suggest attempt to align the legislation to Recommendation 10 of the Financial Action Task Force on Money laundering.⁹⁰ This modification has also

⁸⁷ MLPA 2004, S. 24

⁸⁸ *ibid*

⁸⁹ MLPA 2004, S.10

⁹⁰ Ige, (n 81) 106

seems to have lessened the encumbrances of financial institutions in respect of the period a record must be kept. They can clear the records after 5 years if they deem fit.

3.2 The 2004 AML/CFT Regime in Nigeria

First and foremost, the renowned case ***Federal Republic of Nigeria V, James Ibori & others*** brought to fore the weakness inherent in the anti money laundering provision of 2004.⁹¹ Chief James Ibori ascended the seat of the governor of Delta State Nigeria at the change from military rule to civilian in 1999. He was in power until 2007 after which the EFCC alleged his involvement in the looting of public fund which he succeeded in laundering through associates and entities in Nigeria and in the United Kingdom⁹² infringing the provisions of the Money Laundering (Prohibition) Act 2004 of Nigeria. A question for determination by the court in the course of trial was the interpretation of **section 14 of the Money Laundering (Prohibition) Act of 2004**. The Court's decision on the subject would be said to be enlightening and to make this clear section 14 is shown hereunder.

“Any Person who:

- a) Converts or transfers resources or properties derived directly or indirectly from illicit traffic in narcotics drugs and psychotropic substances or any other crimes or illegal act with the aim or illegals act with the aim of either concealing or disguising the illicit origin of the resources or property or

⁹¹ Charge No. FHC/ASB/IC/09) (Unreported) delivered on Thursday 17th December, 2007 by Justice Marcel Awokulehin at the Federal High Court sitting in Asaba, Delta State,

⁹² *Ibid*

aiding any person involved in the illicit traffic in narcotic drugs or psychotropic substances or any other crime or illegal act to evade the legal consequences of his action, or.....collaborates in concealing or disguising the genuine nature, origin, location, disposition, movement or ownership of the resources property or right thereto derived directly or indirectly from psychotropic substances or any other crime or illegal act, commits an offence under this section and is liable on conviction to a term of not less than 2 years or more than 3 years.”

The defense counsel, **J. B Daudu SAN** pointed out that interpreting the section in question would require the application of the *Ejusdem Generis* rule. The prosecuting counsel however was quick to point out how inappropriate it was for the *Ejusdem Generis* rule to be applied.⁹³ The court in the interpretation of the section concluded that the phrase “any other crime or illegal act” contained in the section was only restricted to the proceeds of crime from narcotic drugs and psychotropic substances. It held that since the charge against the erstwhile Governor does not contain any drug related offence, it would be improper to apply the section in the circumstances. The relevant portion of the courts decision is reproduced hereunder.

“It must be stressed that ejusdem Generis rules is of general application to the construction all statutes and without exception. In the instant case, it is my view that the words “any other crime or illegal Act’ in section 14 (1) of the money laundering Act are to be construed Ejusdem Generis with those which preceded

⁹³ *ibid*

them and are to be restrictive or limited to funds even remotely connected to illicit traffic in narcotic drugs or psychotropic substances. For a charge under section 14 (1) of the Money Laundering (Prohibition) Act, 2004 to be sustained, the prosecution must first and foremost establish that or at least link such funds to those directly or remotely made or obtained in the course of illicit traffic or narcotic drugs and psychotropic substances.

I respectfully do not share the view that section 14(1) of the Money Laundering (Prohibited) Act, 2004 envisaged all funds to be illegally acquired otherwise the preceding words would have been unnecessary. The only responsible thing to do in the circumstance is to apply the Ejusdem Generis rule in the interpretation of section 14(1) of the Money Laundering (Prohibited) Act to achieve its intendment and I so hold.”⁹⁴

The above decision of the High Court, unappealed by the defendants became the *Locus Classicus* in the definition of the scope of the money laundering in Nigeria until the advent of 2011 anti money laundering provision.

The most important sections of this Act are examined hereunder. The Act begins with restriction on the amount of cash an individual or a corporate entity can hold for the purpose of making a transfer or a payment. For an individual, the amount is restricted to five hundred thousand Naira, (N500, 000.00), and N1, 000,000.00 for corporate entities.⁹⁵

⁹⁴ *ibid*

⁹⁵ Decree 3 of 1995, now Act. However, this amount has been increased in the 2011 Act. No person or corporate entity shall except through a financial institution make or accept payment of sum above N5,000,000.00 and 10,000,000.00 respectively.

A transfer to and from a foreign country of sum above US \$10,000 or its equivalent shall be reported to the Central Bank of Nigeria indicating the name, amount, address of the receiver and sender of the funds or securities.

In the same vein, before entering into a business relationship with a customer, it is provided that the financial institution must verify the customer's identity and address.⁹⁶

For identity verification, a valid original copy bearing the customer's name and photograph would suffice. Originals of public utilities receipt are also required for verification as to the address.⁹⁷ For a corporate entity, the certificate of incorporation or any other official documents verifying the true existence of the body suffices for proof of on the company.⁹⁸

It is still uncertain to what level financial institutions and Designated non-financial institutions comply with this provision. This is solely because these institutions are in the business of making money. 'Undetected money launderers are good business for bankers'⁹⁹ and though the funds are deposited for even a short while and they do not borrow money, they still contribute to the banks liquidity. Therefore, in reality, bankers may turn a blind eye and rationalize this on the basis that critical investigation and verification of potential customers legitimate and illegitimate alike may oust them to other rival financial institutions.

Another important provision of the MLPA 2004 is contained in **section 6 (1)** couched to

⁹⁶ MLPA 2004, S. 5 (1)

⁹⁷ MLPA 2004, S. 5 (2).

⁹⁸ MLPA 2004, S. 5 (3)

⁹⁹ Michael Levi, 'Regulating Money Laundering: The Death of Bank Secrecy in the UK,' (1991) 31 *Brit. J. Criminol*, (2). 112

facilitate the detection of money laundering. It gives financial institutions the mandate to 'seek information from customers as to the origin and destination of the funds, the aim of transaction and the identity of the beneficiary' where suspicious of a transaction. A report of such transaction containing all relevant information on the transaction must be drawn by the financial institution and sent to the Central Bank, the Economic and Financial Crimes Commission, Securities and Exchange Commission or such other appropriate authority.¹⁰⁰

It is assumable that the purpose of these information sharing is to enable the relevant agencies discover the origin of the funds and also to decide whether or not to authorize the stoppage of the transaction.

The Act also overrides the rule regarding banking secrecy and thus financial institutions are barred from raising that as a ground for not complying with the above measures. Though this is clearly a thoughtful provision, it no doubt infringes on the constitutionally guaranteed inalienable rights to privacy of persons.

3.3 The Present Anti Money Laundering Regime: Money Laundering (Prohibition) Act 2011.

The later provision of 2011 makes comprehensive provisions prohibiting the crime of money laundering, laundering the proceeds of a crime as well as prohibiting the financing of terrorism. This improvement appears to be in adherence to the international call on the issue of terrorist financing after the wake of the September 11 attack on U.S soil. It includes provisions to cure the loopholes in the previous money laundering provisions. For example,

¹⁰⁰MLPA 2004, S. 6 (2)

it creates provisions for failing to declare or when declared, includes false declaration to the Nigerian Customs with respect to transfers done internationally as stipulated by S. 12 of the Foreign Exchange (monitoring and Miscellaneous Provisions) Act.¹⁰¹ A penalty for failing to comply attracts forfeiture of 25% of undeclared funds or in the alternative 2 years upon conviction.¹⁰²

In addition, 2004 required financial Institutions to imbibe the culture of due diligence by obtaining vital information and demanding for valid identification such as national ID cards, Drivers license or International passport when the amount to be transacted is above \$ 5,000 (five thousand dollars). By virtue of section 5(1)(b) of MLPA 2011 the amount have been reduced to \$ 1,000 (one thousand dollars). The reduction of the sum is targeted at eliminating “smurfing,” i.e. breaking down of the laundered money into smaller bits in such a way that they become lower than the threshold stipulated for reporting by the financial institutions and designated non-financial institutions when identified.

Before the enactment of the MLPA 2011 executives could not proactively fight money laundering without breaching any of their duties to their customers. An impressive provision of this act is the granting of immunity to directors, officers and employees of financial institutions as well as the designated non-financial institutions from both civil and criminal liability in court actions brought against them by their customers for failing to carry out their duties under the Act.¹⁰³ The effect of this immunity is easier compliance

¹⁰¹ Cap. 34, LFN 2004

¹⁰² MPLA 2011, S. 2 (5)

¹⁰³ *Ibid.* S. 6 (10)

with the provisions of the law, having eliminated all bottle necks as the risk of liability.

Lastly, as we have noted the flaw in the MLPA 2004 for its ambiguity and failure in covering other series of serious offences excluding drug related offences, the MLPA 2011 has cured this inadequacy by providing succinctly, series of crimes to be covered under the Act.¹⁰⁴

S. 15. “(1) Any person who:

(a) Converts or transfers resources or properties derived directly from:

(I) Illicit traffic in narcotic drugs and psychotropic substances; and

(II) Participation in an organised criminal group and racketeering, terrorism, terrorist financing, trafficking in human beings and migrant smuggling, tax evasion, sexual exploitation, illicit trafficking in stolen and other goods, bribery and corruption, counterfeiting currency, counterfeiting and piracy of products, environmental crimes, murder, grievous bodily injury, kidnapping, illegal restraint and hostage taking, extortion, forgery, piracy, insider trading and market manipulation and any other criminal act specified in this Bill or any other legislation in Nigeria which is predicate to money laundering within the aim of either concealing or disguising the illicit origin of the resources or property or aiding any person involved to evade the illegal consequences of his action and

(b) Collaborates in concealing the genuine nature, origin, location, disposition, movement or ownership of the resources, property or right thereto derived directly or indirectly from the acts specified in paragraph

¹⁰⁴ *Ibid.* S. 15

9a) of this subsection commits and offence under this section and is liable on conviction to imprisonment for a term not less than 5 years but not more than 10 years”¹⁰⁵

This is regarded as a broad list of predicate offences and does even more than provide a suitable and modelling laundering framework. It is my opinion that it goes a long way to legislate on corruption owing to a seeming overlap between the two. This provision can therefore supplement anti corruption efforts.¹⁰⁶ With this broad list of predicate offences, Nigeria takes a huge step in complying with the recommendations of the FATF.

The common grounds between the MLPA 2004 and MPLA 2011 is the introduction of strict consumer due diligence measures, through the identification both potential customers and existing customers, Know your customer measures reporting to the relevant and keeping records of any suspicious transactions. These mechanisms are measures recommended by the FATF for combating money laundering as well as terrorist financing and Nigeria has applied these recommendations, as it's evident from the above exposition.

¹⁰⁵ *ibid*

¹⁰⁶ J. C. Sharman and David Chakin, 'Corruption and Anti Money Laundering Systems: Putting A Luxury Good to Work', *International Journal of Policy, Administration and Institution*, Volume 22, No. 1, January 2009, p. 27

CHAPTER 4: THE IMPACT OF MONEY LAUNDERING IN NIGERIA

The adverse effect of money laundering is inherent all over the world as it is also found in almost all segments of life. However, more significant are the economic effect, which to a very large extent inflates the overall effect of money laundering. It seems developing countries have been hit hard by the adverse effect of money laundering having been made as a primary target¹⁰⁷ as they have been used as dumping grounds for laundered money owing to the lack of robust regulatory framework for their baby privatization schemes¹⁰⁸

In Nigeria, out of Nigeria's 140 million citizens, 80-90 million are in poverty despite the country's rich oil and vast human resources.¹⁰⁹ The \$300 billion earned during the last four decades from oil exports still accounts for 20% less than the 1975 level of per capita income. The external debt burden of \$33 billion comprises 60% of the country's GDP.¹¹⁰ The former executive chairman of the Economic and Financial Crimes Commission (EFCC) stated:

“Without seeking to befog you with statistics, let me share a few example of what corruption has cost us as a people and as a nation. My pet example is

¹⁰⁷ Donato Masciandaro, 'Money Laundering: The Economics of Regulation,' 7 *European Journal of Law and Economics* 238, May 2005. P 30.

¹⁰⁸ Giriraj, (n8,) p 8.

¹⁰⁹ Nsongurua J. Udombara, 'Fighting Corruption Seriously? Africa's Anti-Corruption Convention' (2003) *SGJICL*, No. 2 Vol.7, 451

¹¹⁰ Nuhu Ribadu, "The Role of EFCC in Sanitising the Nigerian Economic Environment in a Democratic Setting". Being a paper presented at the Adamawa Economic Conference and Financial Exhibition, on December 9th-10th, 2004).

the £20 Billion Pounds (about US \$500 Billion) of development assistance that has been stolen from this country since independence to date by past leaders of our country ...the money could create the beauty and glory of Western Europe six times all over Nigeria. Nigerians line at the gate of Western Embassies daily in search of visas to flee the country, but the best way to appreciate this figure is to recall that it represents six times the value in money that went into rebuilding Europe via the famous Marshal at the end of the 2nd World War.”¹¹¹

The money laundering activity of drug cartels and other launderers have a devastating effect on the Nigerian financial system and even outside it.¹¹² The laundered money finds its way into global financial systems and a country in the network of the international financial system is thus at risk. We shall in this chapter examine the economic, social and political implication of money laundering and terrorist financing. The global effect of these menaces is also examined in details.

4.1.1 Economic implications

The economic implication of money laundering and terrorist financing is overwhelming. With the liberalization of trade, the activities of money launderers affect the indigenous industry. Growth of local industries could be stunted while being deprived of funds. As is typical of laundering activities, in order to legitimize their laundered money, the launderers

¹¹¹ *Ibid*

¹¹² Yusuf Ibahim Arowosaiye and Ahmad Ibrahim Kulliyah, ‘The Devastating Impact of Money laundering and Other Economic and Financial Crimes on the Economy of Developing Countries: Nigeria as a case Study, (2010)Pg 1

use front line companies to offer products at prices less than the real cost at which a manufacturer can produce.¹¹³

The laundered money is routed through mass imports of goods ranging from auto spare parts to pharmaceutical products and are sold at very low prices. The reason for this is not distant, and that is that launderers only need to hide and transfer their proceeds of crime and have little or no intention to maximize profit as the genuine entrepreneur would do.

It becomes both discouraging and a great challenge for the genuine entrepreneur involved in legitimate business transactions to compete equally in this situation giving the very high likelihood that buyers would be willing to make purchases where the prices are inviting. In any event, the return on investment realised from domestic production and legitimate business will deplete and fall much lower than returns of the money launderers, thus distorting and affecting domestic production. The knock on effect of the above situation is simply the decline in the small and medium scale enterprises, which are one of the government's millennium development goals (MDG). Foreign investment on the other hand would decline as no investor would invest in an environment where illicit money play a huge part in the allocation of resources.¹¹⁴

Secondly, the IMF's former director once estimated the volume of laundered money at \$600,000 million that made up of 2-5% of World GDP. The illicit funds are invested in projects that are not economically viable, and this leads to distortions in the economy and

¹¹³ M. Y. Norhashima, 'An Examination of the Malaysian Anti-Money Laundering Act 2001 (AMLA),' *Comparative Law Journal Supplementary Series*, August,1 (2006) p.405-464

¹¹⁴ Peter J. Quirk, *Macroeconomic Implications of Money Laundering*, Working Paper, Washington, DC: International Monetary Fund, June 1996.

hides the true picture of the economic status of the country. This confuses economic policy makers of the affected countries. Likewise, money moving from countries with robust economies to countries with poor economies, would seemingly defy the law of economics.¹¹⁵ Great amount of dirty cash into the economy through money laundering activities create a false demand leading to a relative adjustment of economic policy by officials. At the long run, there comes a sudden movement of the money with no predictable cause leading to financial sectors collapse. This applies to Nigeria also, as it is a country gifted with oil wealth. Vito states that the laundering process that makes artificial capital outflows or inflows can affect the exchange rates and interest rates. Nigeria experienced this situation during '80s and '90s as a result of distortions in the economy. This led to many flourishing financial institutions such as commercial banks in Nigeria to collapse midway, and be liquidated. Other institutions such as mortgage and finance institutions collapsed due to sudden withdrawal of deposits with the origin of ill-gotten wealth. The structural adjustment program (SAP) implemented during 1985-1993 by then General Ibrahim Babangida to control the inflationary trend by devaluation actually led to the Naira losing more than 9,000%.¹¹⁶

Furthermore, the impact of money laundering on the foreign exchange market of every economy including Nigeria is enormous as recognised by the European Union (EU) one of the sectors of the economy that deals with large amount of cash is the foreign exchange

¹¹⁵ V, Tanzi, 'Macroeconomic Implications of Money Laundering', in *Responding to Money Laundering, International Perspectives*, edited by Erenest U. Savona, (Malaysia: Harwood Academic Publisher, 1997, p. 96.

¹¹⁶ A, Ibrahim and K, Ahmade 'The Devastating Impact of Money Laundering and other Economic and Financial Crimes on the Economy of Developing Countries: Nigeria as a Case Study, p.11

market making it a vulnerable market because of the large amount of money involved in the trade. Money laundering increases the system risks and liability of the financial system of every country. The resulting effect of this is the continuing loss of investor's confidence in the financial system.¹¹⁷ A country like Nigeria whose financial system is growing does not need any impediment to its financial growth by allowing its ground to be used as a haven for money laundering activities.

Lastly, money laundering could lead to an increase in the number of unregulated informal market established for the purpose of avoiding or evading the taxman. **Ikpang** suggests that this no doubt 'creates some trade imbalances and balance of payment problems in the economy'¹¹⁸

4.1.2 Political implication

Huge funds gotten from one form of embezzlement of public funds find their way into political campaigns in times of election. Part of the reasons for these benevolent donations towards party campaigns in Nigeria is done in the hope of securing any political influence or power in the event the party wins. Many are politically exposed persons who are either "individuals who are or have been entrusted with prominent public functions in a country, for example Heads of State *or* of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political

¹¹⁷ World Bank and IMF Global Dialogue Series, *Anti-Money Laundering and Combating the Financing of Terrorism*, Regional Video conference: Anglophone West Africa Region— The Gambia, Ghana, Nigeria, and Sierra Leone September 10 2002, P. VIII.

¹¹⁸ Aniedi Ikpan, 'A critical Analysis of the Legal Mechanisms For Combating Money Laundering in Nigeria', 2011, vol 1 *AJLC* p. 124.

party officials.”¹¹⁹ Such donors has never been indicted or investigated In relation to the source of the funds unlike other countries. In Columbia President Ernesto Samper was accused of funding his campaign with a large sum of money donated by a group of drug organisation known as the Cali Cocaine Cartel in 1996.¹²⁰ It is also a fact that money laundering can “undermine the democratic and economic basis of societies” which makes state institutions weak reduces the people’s confidence in the rule of law.¹²¹

This occurred in Russia following the 1998 meltdown of the national economy that resulted in the transfer of \$74 billion from Russian banks to various offshore institutions led to an 200% estimated rise in inflation, 12% increase in unemployment rate and 4% rise in crimes.

The amounts involved are so large that they undermine the integrity of domestic economies of countries including Nigeria and international financial systems. It has been reported that some \$100 billion found its way out of Nigeria from the mid-1980s to 1999, and more than \$1 trillion entered the United States every year through international financial systems via drug trafficking and other economic crimes.

¹¹⁹ *Politically Exposed Persons (PEPs) in relation to AML/CFT*, Middle East & North Africa Financial Action Task Force, 11 November 2008, p. 3

¹²⁰ George Millard, ‘Drugs and Organised Crime in Latin America,’ *Journal of Money Laundering*, Vol 1, issue 1, November 1997. P 73.

¹²¹ The G8 Summit at Birmingham, 17th may 1998 Communiqué, <http://www.g8.utoronto.ca/summit/1998birmingham/finalcom.htm> assessed 18th August 2012

Nigeria faced its worst period during '80s and late '90s due to the adverse effects of economic crimes. Potential foreign investors did not come forward to invest in Nigeria.¹²²

4.1.3 Social implications

Nigeria is fraught with so many impediments stunting its democratic growth. The economic and political consequences of criminal organisations and money laundering deteriorate the social culture, ethical values and the democratic foundation of the people. These criminal consequences are bound to weaken the smooth move to democratic system. Most vitally, Money laundering is tied to the principal criminal activity that breeds it. Laundering gives room for criminal activity to flourish thereby rocking Nigeria's public image from positive to severe negative. Certain periods have meant positive image for the country e.g (1960-1967, 1970-1983, 1999-2007) while bad times in respect of the countries' image was recorded during 1993-199, 2007-date.¹²³ For a long time now, the country has been battling with building an image that has been grossly dented by the activities of criminals involved in money laundering activities.¹²⁴ This impresses some limitations on Nigeria in the international economic relations.¹²⁵ Until late, Nigerians were being treated with contempt in most entry borders of the developed country for reason of the country's

¹²² Sharon LaFraniere, "Africa Tackles Graft, With Billions in Aid In Play," New York Times, July 6, 2005. http://www.nytimes.com/2005/07/06/international/africa/06lagos.html?_r=1&oref=slogin assessed 18th August 2012.

¹²³ V. Egwemi and A.T. Usman, 'Back to 1999: The 2007 General Elections and Nigeria's Image Crisis.' 2007. *Int. J. Law Contemp. Stud*, 2(1-2): 1-16.

¹²⁴ The 'Re-branding Nigeria' agenda of the Yar'Adua administration led by Dora Akunyili, Nigeria's erstwhile Information Minister adopted to create the awareness of imbibing and taking conscious steps in the redefining the values of the country. See also Ishaq, A, Rebranding Nigeria is a Good Idea. The Guardian, March 27, 2009. pp: 65.

¹²⁵ V. E. Inim, 'Money Laundering, History, Processes and Impact', being a paper presented at a seminar at Eko Hotel Lagos, 2000. P.5

involvement in money laundering and other criminal activities; even when a trivial number of persons are involved in these activities

4.1.4 The Global Effect.

Most importantly, the challenge for the global society at large portrays that organised crime occurs irrespective of the territory. Money laundering has come to be known as a huge risk to the global society which has been made easy by the elimination of capital controls and the liberalisation of global finance.¹²⁶ Money laundering, now regarded as the oil of the global criminal networks may be described to be one of the disadvantages of globalisation as it has introduced among others, the crime of drug dealings, terrorism and arms and human trafficking. Aside distorting the world fiscal policy, it has kept the market of illicit drugs going all over the world as well as a number of international crimes especially the mafia groups and their criminal activities in many countries. Terrorist employ laundered money to fund their activities. The events of September 11 2001, necessitated a lead by the US on the War on terror. And then the continued war campaign on Afghanistan and the Iraq leading to a very high tension in the international atmosphere

¹²⁶ Ikpan, *Supra*, p. 125

4.2 Challenges and Weakness of the Legal Mechanisms in The Fight Against Money Laundering In Nigeria

No doubt the enactment of the Money Laundering Act 2004 shows the governments efforts in combating money laundering however these giants steps may be less effective if the hurdle of enforcement of law are not dealt with.

First and foremost, the Act makes various provisions pertaining to the disclosure of information on financial transactions by financial institutions and penalties following any breach. However, it is doubtful to what extent the various regulatory institutions can go to enforce these provisions, bearing in mind Nigerians habit of undermining legislations and laid down laws. Even when they fail to comply, the regulatory institutions have been known to turn a blind eye to non-compliance. This brings to fore the state of corruption bedeviling the nation. In this instance, there is an uncanny collaboration between officers of non-complying banks and the regulating institutions,¹²⁷ In the long run, what more is to be expected than an inadequate enforcement of the AML/CFT laws.

Again, Inspectorates and officials have gone soft and lax in the performing of their monitoring functions on the activities of the financial institutions. In addition to this, the regulatory institutions sometimes lack the technical knowhow to effectively carry out their duties. This is owing to the fact that the regulation of financial transaction is one that requires experience and competent professionals whom are just a handful in the country.

¹²⁷ N S Okogbule 'An Appraisal of The Legal and Institutional Framework for Combatting Corruotion in Nigeria' 2006 13 *J Financial Crime* 1, 92, see also C. Achebe *the Trouble With Nigeria* (Fourth Dimension Publishers Enugu Nigeria 1983) 46-55

This is even more demanding when the complexity of money laundering is involved. One certain way to guarantee the adequate monitoring of these institutions is to enhance the skills of the officers. In this vein, the actions of United Nations Office on Drug Control in improving the skills of the Economic and Financial Crimes Commission is praiseworthy and is sure to have a positive impact if put to use appropriately, it has also supported Nigeria in the project funding of her forensic laboratory.¹²⁸

According to **IKPANG**, 'the enforcement of any law cannot go further than the contemplations of the law itself.'¹²⁹ This means that the law cannot be enforced beyond the letters or provisions contained therein. Therefore, several inadequacies in the Nigeria Anti –Money laundering and counter terrorism financing frameworks as enumerated above have delayed the accomplishments of the various agencies and bodies in the carrying out of their duties. Example, Section 18 of Decree 1995 (which later became an act) framework on money laundering provides that: where resources beyond the justification of an accused person's income are discovered, such discovery shall be taken into consideration in evidence against the accused unless he proves that those resources are indeed legitimate. The law contemplated that the onus to prove the legitimacy of his resources shifts to the accused because he alone is in the best position to prove the source it.¹³⁰ However this provision failed to accomplish the desired effect as the court of laws in view of the Common Law principle presumes an accused person innocence until proven otherwise. The court has therefore labeled the effect as a mere shift in evidential burden as

¹²⁸ EFCC goes CSI - EU funded Project supports EFCC in the establishment of its Forensic Laboratory, released April 12, 2012, available at http://www.unodc.org/nigeria/en/press-release_efcc-forensic-laboratory.html assessed on the 18th of August 2012.

¹²⁹ Ikpong *supra* 118.

¹³⁰ Dr. Ndanusa, "*Recognising and Combating Suspicious Financial Transactions: The Roles of Financial Institutions and Regulatory Authorities*", a paper presented at a 2-day Conference on Money Laundering and the Nigerian Economy at Victoria Island, Lagos on October 29th 2003, p.3.

opposed to a shift in the burden of proof. This provision has therefore failed to remedy that of Decree No. 3 of 1995.¹³¹

The slow grinding wheels of the Nigeria judicial system can act as a clog in the wheel of justice. Nigerian judicial system is hampered with the sluggish grind of the wheel of justice which seems to pose a major challenge to the enforcement of laws as well as to the function of the agencies.

With respect to the ICPC Act, the Act has been handicapped by the provision of interlocutory injunctions truncating its progress. Justice Emmanuel Ayoola of the Supreme Court aired his opinion that unlike the Economic and Financial Crimes Commission (EFCC), which had made numerous convictions over corruption because of its intolerance to interlocutory inductions, ICPC has done little to prosecute culprits.¹³² It is important that more room be given to the ICPC Act to enable the continuation of graft even in the light of the existing provisions of interlocutory injunctions.

Furthermore, it appears the agencies are in an inferior position in securing convictions against money launderers owing to the favor of the courts on the accused person on grounds of fundamental human rights. This seeming favor is evidenced in the High Court case between *Orji Uzor Kalu V EFCC*¹³³ wherein Kalu the ex-governor of Abia State

¹³¹ Femi Oloruntoba, "Emphasizing The Proceeds of Financial Crimes Than The Criminals as A Panacea For Fighting Money Laundering", being a paper presented in a 2-day Conference on Money Laundering and the Nigerian Economy at Victoria Island, Lagos on October 29th, 2003.

¹³² Lawrence Njoku (Enugu), *The Guardian*, "ICPC Convicts 16 Nigerians, Lists Hurdles To Anti Graft War", Wednesday 22nd July 2009.

¹³³ No. HU/177/N/2007.

(applicant) was arrested for financial crimes but sought the leave of the court to enforce his fundamental human right. The court was quick in granting this leave, which had the effect of a stay of action on all matters connected to the substantive suit.

From the above background, slow judicial process causing delays in the substantive matter indirectly defeats the essence of enforcing money laundering and terrorist-financing framework. Counsel for the defendants who are presumably ministers in the temple of justice have now relied on this loophole by employing every known tactics to delay prosecution by moving from one motion to the other in the bid to forestall justice. This practice does not spell well for the enforcement of the anti-money laundering frameworks.

Besides, situations of people punished through sack from their places of work or even killed from their involvement in giving useful information to the appropriate agencies have led to withdrawals of credible persons from coming forward for the purpose of giving evidence in court causing a delay in the process.

Furthermore, the probable abuse of power by the Attorney General who has been given much power by the constitution encourages the delay in the slow judicial process. In 2007, a controversy as to power of the agencies to prosecute criminals came to play. In the heat of it, the president granted the request of the Attorney General and minister of Justice, Mike Aondoaka with the effect that

“All agencies involved in the prosecution of criminal offence such as EFCC and ICPC should report and initiate criminal proceedings with the consent of

the Attorneys-General of the Federation. That the Attorney-General of the Federation should exercise powers conferred on him pursuant to Section 43 of the EFCC Act 2004 to make rules and regulations the respect to the exercise of any of the duties functional or powers of the EFCC.”¹³⁴

This was heavily criticized and has also occasioned the delay of criminal prosecution up until the president reversed the decision.

At this point, it may be suggested that for the accomplishment of the fight against money laundering and its other predicate offences, it may be imperative to establish a specialized court to be seized with the responsibility of entertaining disputes and complaints emanating from the commission of economic crimes in Nigeria. This may be the solution to check the delays as the federal High Court, which by the Constitution has jurisdiction over such matters, seems to be handicapped by a stretched jurisdiction thereby causing unnecessary delay in meting out justice.

More so, the immunity clause enshrined in the constitution in favour of some political office holders who engage in embezzlement of public funds and thus escaping prosecution slows down the judicial process as well.

Moreso, inadequate funding of agencies and officials involved in fighting money laundering and terrorist weakens their well-meaning efforts .They are not provided with sufficient remuneration required to motivate them to carry out their responsibility effectively. Furthermore, money laundering is so complicated and sophisticated that it sometimes

¹³⁴ Dele Adesina, “The Prosecutorial Powers of The Attorney-General of the Federation and Minister of Justice Versus the Prosecutorial Powers of Economic and Financial Crimes Commission (EFCC) :A Needless Controversy”. In Suleiman Abdullahi (Ed): Corpus of Topical Legal Issues: Collection of Legal Essays Written in Honor of Honourable Justice S.U. Onu, JSC, CON. Kaduna: Suleiman Abdullahi & Associate, 2008.

requires high tech devices to successfully carry out their crimes and cover it as well, likewise the officials and agencies need similar upgrade not only in the area of staff training but in making available matching high tech equipment to be able to be a step ahead of the criminals. However the funds to provide all these are not available.¹³⁵

The above militating factors notwithstanding the efforts of the government in putting together a robust anti-money laundering framework acts as a clog in progress of these efforts.

¹³⁵ A. N, Ohanyere, "Strategies in Combating Money Laundering in the Financial System" National Seminar on Economic Crime, 22 July 2002, p. 43

CHAPTER 5: CONCLUSION AND RECOMMENDATIONS

Money laundering and terrorist financing have become a crucial problem affecting the socio economic pattern of the country Nigeria. This is more so when they are aided by corruption in various levels. In this work the researcher has shown the various efforts in the Nigerian AML/CFT regime aimed at combating money laundering and terrorist financing as far back as 1995. Several amendments have been made to the Nigerian AML/CFT and have equally added impetus to this effort by enacting the Money Laundering (Prohibition) Act 2011, an amendment to the previous MLPA of 2004. We have thus seen so far that these legislative efforts, the setting up of relevant institutions have shown compliance with the recommendations and guidelines of the Financial Action Task Force FATF which is clearly the chief body on the subject of money laundering and terrorist financing.

However, with the government's compliance and progress in the various anti-money laundering and counter terrorist financing regulation in force, a look back at the worsening events in the national terrain renders the seeming efforts of the government to combat money laundering and terrorist financing questionable. The rise in terrorism especially from the most dreaded northern sect *Boko Haram* in Nigeria have so far proved the efforts of regulators ineffective as more and more lives are lost through multiple bombings in churches and public places. Foreign investment in the country has reduced drastically as Nigeria falls into an unprecedented poverty level. We ponder on the question, are our

regulations the cause or are we cursed? Or is the Nigerian AML/CFT legislation a mere fulfillment of the international standards or recommendations to keep the country's name away from the FATF shame list of non-compliant countries.

In the first chapter of this work, an overview of the concept of money laundering and terrorist financing were examined and a nexus between the two concepts was established. the researcher found that the similarities or link between money laundering and terrorist financing in the absence of any empirical study is not enough to accept an assumption of a financial nexus between terrorism and organized crime, therefore the regulatory link between the money laundering and financing of terrorism is flawed and not completely effective in its efforts to combat terrorism financing.

Evident of this convergence as a tool to combating money laundering and terrorism is illustrated in the **FATF 40+9** Recommendations, preventing money laundering in the first 40 recommendations and terrorist financing in the 9 Recommendations.¹³⁶

Empirical evidence show that anti money laundering techniques have been successful in fighting money laundering in many countries.¹³⁷ However empirical evidence has failed to show that money-laundering techniques are useful or have been successful in the fight against terrorist financing.¹³⁸ It is therefore not clear whether the Convention's¹³⁹

¹³⁶ These recommendation has since February 2012, been merged into the original 40 Recommendation.

¹³⁷ N. Clark 'The Impact of Recent Money Laundering Legislation on Financial Intermediaries' in Michael Ashe and Barry Rider (eds) *Money Laundering Control* (1996) p. 92

¹³⁸ Munshani (n 5) 78

¹³⁹ UN Convention on terrorist financing

preference for placing anti-terrorist financing on the subsisting anti-money laundering procedure is due to the urgent need for a preventive measure after the September 11 attack. However, whatever the reason may be, tackling the problem of terrorist financing with anti money laundering mechanism is seen in the Convention's emphasis on customer identification and suspicious transaction reporting which are the two main methods for preventing the activities of organized criminal syndicates.¹⁴⁰

The **Money Laundering (Prohibition) Act of 2011** which begins with an explanatory memorandum that reads thus:

“This Act-

- (a) Provides for the repeal of the money laundering Act 2004 and enactment of money laundering (prohibition) Act , 2011;
- (b) Makes comprehensive provisions to prohibit the financing of terrorism, the laundering of the proceeds of a crime, or an illegal act; and**
- (c) Provides appropriate penalties and expands the scope of supervisory and regulatory authorities so as to address the challenges faced in the implementation of the anti money laundering regime in Nigeria.”

Clearly, this legislation aims to cure the menace of money laundering at the same time terrorist financing. It contains therein, elaborate customer identification, monitoring, suspicious transaction reporting as well as know your customer principles. These mechanisms are to be used in combating ML and TF.

¹⁴⁰ See UNSCR, Article 18. This section includes a list of measures, members states can implement in their various home legislation, including the identification of customers, reporting of suspicious transactions and supervision of money transfers.

The above convergence makes the fight against TF difficult owing to the differences between ML and TF which includes legitimate or illegitimate means of sourcing funds. It is therefore difficult for financial institutions to separate these kinds of transactions. This is so because where funds are legitimate, unless there's a link between the transaction and a person, the law enforcement agencies would be less likely to detect it. The Task Force even acknowledges that 'the only time financial institutions might be able to detect terrorist financing as distinct from other criminal misuse of the financial system is when a known terrorist or terrorist organization has opened an account'.¹⁴¹

It my submission in this work that the divergences between terrorist financing and money laundering means that same methods cannot be utilized for both problems and as such terrorist finance cannot completely be eradicated with the same regulatory provisions as identification, monitoring or control as money laundering activities. In the real sense of it, the 'trailing the money' strategy to restrict the terrorist of funding has the simple meaning of freezing the accounts of only known terrorist and perhaps, suspected terrorists, if there's any chance their names are known.¹⁴²

From the foregoing, it is my view that Money Laundering (Prohibition) Act of 2011 is superfluous in its effort to fight money laundering and terrorist financing as both cannot be treated alike. The enactment of **Terrorism (Prevention) Act of Nigeria, 2011** is in the researchers view a comprehensive legislature on its own to curb terrorism and its financing as it deals with terrorism separately. Among others things, it prohibits the

¹⁴¹ FATF on Money Laundering, *Guidance for Financial Institutions in Detecting Terrorist financing* (2002) p.3

¹⁴² M.-F Cuellar, 'Criminal law: The Tenuous Relationship Between The Fight Against Money Laundering and The Disruption of Criminal Finance', 93 *Crim. L. & Criminology* (2003) p. 311

criminalizing of the acts of terrorism and its organizations, support either through harboring, training, funds or obstructing investigations on terrorists. It also includes seizure of terrorist cash, property. Most importantly, it embodies an obligation on financial institutions (FI) and Designated Non- Financial Institutions (DNFI) to report suspicious transaction relating to terrorism.

Aside the above flaw in trying to fix terrorism financing issues with money laundering techniques, the social, economic and political effect of money laundering and terrorist financing in Nigeria was examined in this work, it is concluded in this paper that unless the problem of corruption is tackled and brought to a low level in Nigeria, efforts to curb ML and TF would greatly be undermined. As the MLPA 2011 is applauded for being exhaustive for the inclusion of more predicate offences to meet the challenges of the changing times, Nigerian government should take advantage of this exhaustive provisions to cure the money laundering and terrorist financing from the root. Corruption, the problem with Nigeria has caused political instability and toppled Nigeria governments. A commentator once suggested that developing countries whose comprehensive anti money laundering framework does not effectively curb its AML issues is either being handicapped by very corrupt elites or have established such frameworks for formality sake to maintain good reputation rather than a sincere interest in fighting money laundering and terrorist financing.¹⁴³ The corruption level in Nigeria could be one of the reasons of the low efficacy of the numerous versions of Anti-money laundering regulations.

¹⁴³ J.C. Sharman and David Chaikin, 'Corruption and Anti-Money Laundering Systems: Putting a Luxury Good to Work,' *An International Journal of Policy, Administration, and Institutions*, Vol. 22, No. 1, January 2009 p.28

Again, a pragmatic approach in the enforcement and prosecution of money laundering and terrorist financing laws is important as this is bound to improve the economic and political development of the country. A number of stakeholders are expected to play a role in this fight against money laundering and they include the bench who would serve as impartial umpires in the prosecution of offenders. A bench with men of integrity to dispense justice is paramount In this case. The renowned Ibori's case is a typical example lack of integrity in our judicial system. In the Court sitting in Delta State Nigeria where he was once the executive governor, he was found not guilty of the various counts of charges against him. Months after he was found not guilty, the Southwark Crown Court sitting in London convicted him of Money laundering. This simply shows how biased the Judiciary is in prosecuting politically exposed persons.

The members of the bar¹⁴⁴ are also stakeholders in the fight against ML and TF. They are ministers in the temple of justice and as such, owe the court and the society at large a duty not only to do justice but to ensure that justice would be seem to have been done. Diligence in handling matters would go a long way in saving the time of the courts and ensuring that there is no clog in the wheels of justice.

Finally there also needs to be cooperation amongst nations in combating money laundering and terrorist financing. Without effective International Corporation, the likelihood of curbing these menaces would be low. Indigenous regulatory frameworks which are powerful tools are often ignored as some countries particularly developing countries have less strict anti money laundering and terrorist financing laws allowing effortless access into

¹⁴⁴ lawyers and prosecutors

financial systems of other jurisdiction with more robust regulation, thus the need for a global standard and effective solution. The Financial Action Task Force has been in the forefront in issuing guidelines for implementation by countries and countries face enlistments in the 'shame list' for failing to comply with them.¹⁴⁵ However, caution must be followed in trying to interfere with the course of action of other sovereign country especially a developing country whose undeveloped economy makes the compliance of the FATF a very costly one.

Finally, various statutory agencies like the Economic and Financial Crimes Commission (EFCC), Nigerian Drug, Law and Enforcement Agencies (NDLEA), International Corrupt Practices Commission (ICPC), Central Bank of Nigeria (CBN) are stakeholders in enforcing and playing supervisory, monitoring, investigatory role in this fight. There is need for the intensification of their efforts in bringing life to Nigerian's anti money laundering regime to ensure that the country stays amongst countries with a sincere commitment in the fight against this menace.

¹⁴⁵ Nigeria was once on the shame list but has been delisted from it after its full compliance to FATF guidelines.

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